

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of
GTE Corporation ("GTE") and Bell Atlantic
Corporation ("Bell Atlantic") to Transfer
Control of GTE's California Utility
Subsidiaries to Bell Atlantic, Which Will
Occur Indirectly as a Result of GTE's Merger
With Bell Atlantic.

Application 98-12-005
(Filed December 2, 1998)

**INTERIM OPINION MODIFYING DECISION 01-09-045
TO INCLUDE RESPONSE TO COMMENTS**

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Today's decision modifies, without substantive change, Decision (D.) 01-09-045, in which we resolved pending requests for awards of intervenor compensation filed by The Utility Reform Network (TURN), The Greenlining Institute (GL), Latino Issues Forum (LIF)¹, and Public Advocates, Inc. (PA) for substantial contributions to D.00-03-021. We awarded TURN \$146,113.66; we awarded GL/LIF \$159,414.76; and we awarded PA \$167,844.20. Through inadvertence, we failed to include in D.01-09-045 our response to the comments we received on the Administrative Law Judge's (ALJ) Draft Decision on these requests. What follows is D.01-09-045 in its entirety, modified by the addition of section 8 ("Comments on Draft Decision"). There is no change either to the amount of the awards or the reasoning supporting them. However, given the pendency of GL/LIF's application for rehearing of and petition for modification of D.00-04-003, GL/LIF's award is interim, and is subject to adjustment following our review of the rehearing and petition for modification.

1. Background

In this proceeding we reviewed the joint application of GTE Corporation (GTE) and Bell Atlantic Corporation (Bell Atlantic)² for approval to transfer GTE's California utility subsidiaries to Bell Atlantic, as a result of the merger of GTE with Bell Atlantic. In D.00-03-021 we approved the application with limited conditions and clarifications. The conditions and clarifications relate to the total amount of benefits allocated to ratepayers, distribution of those benefits, the funding of the Community Collaborative Agreement (CCA), preparation of

¹ GL and LIF jointly filed a Request for Compensation. Hereinafter they are referred to collectively as GL/LIF.

² GTE and Bell Atlantic are hereinafter jointly referred to as "Applicants".

service quality monitoring reports, and sharing of state level accounting cost information. We adopted D.00-03-021 following 13 days of evidentiary hearings during which 146 exhibits were received, as well as opening and reply briefs, and comments on the proposed decision (PD) of the ALJ.

TURN, GL/LIF, and PA all filed timely Notices of Intent (NOI) to claim intervenor compensation. Following issuance of D.00-03-021, TURN, GL/LIF, and PA each filed a Request For Compensation (Request). GL/LIF filed a subsequent Errata to Request (Errata).

No opposition to TURN's Request was filed. However, Applicants filed a Joint Response (Joint Response) to the Requests of GL/LIF and PA. Applicants agree that the participation of these intervenors merits compensation, but they challenge the proposed hourly rates for attorney services. A Response to Request (Response) was filed by PA addressing the issue of duplication of effort between PA and GL/LIF. A Motion For Leave to Late-File Reply and Reply (Reply) were filed by GL/LIF, in which the issue of duplication of effort is addressed.

2. Procedural Matters

The motion of GL/LIF for leave to late-file the Reply to the Response of PA is granted.

3. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. ³ Section 1804(a) requires an intervenor to file an NOI to claim

³ All statutory citations are to the Pub. Util. Code.

compensation within 30 days of the prehearing conference (PHC) or by a date established by the Commission. The NOI must present information regarding the nature and extent of planned participation in the proceeding, and an itemized estimate of compensation that the customer expects to request. The NOI may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgement of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with Section 1806.

4. NOI To Claim Compensation

TURN, PA, and GL/LIF timely filed NOIs after the first PHC. By a ruling dated April 1, 1999 (Eligibility Ruling), the assigned ALJ found each to be a customer as defined in Section 1802(b). The Eligibility Ruling also found that TURN and PA demonstrated significant financial hardship (as defined in Section 1802(g) in their NOI filings. The Eligibility Ruling also required that GL/LIF include a showing of significant financial hardship in the request for compensation.

In response, GL/LIF referred to hardship showings they made in other proceedings regarding the relevant time period. Specifically, in D.00-04-011, the Commission found that GL/LIF met the test based on documentation provided on December 23, 1999, in Rulemaking (R.) 98-12-015. For purposes of this proceeding we will apply this finding of significant financial hardship.

In the Eligibility Ruling, both PA and GL/LIF were put on notice that their estimated budgets appeared potentially excessive. PA estimated total fees and costs of \$323,400. (The amount sought in the Request is \$325,649.) GL/LIF estimated their budget to be \$301,500. (The amount sought in the Request is \$323,276.50, and an additional \$642.72 is claimed in the Errata.)⁴

The statutory standard directs the Commission to administer the intervenor compensation program in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding. (§ 1801.3(f).) The Eligibility Ruling put all

⁴ TURN's estimated budget was 124,750.00. The amount sought in the Request is \$146,113.66.

intervenor on notice that to the extent their efforts in the proceeding duplicate the efforts of other parties, they are at risk for receiving reduced or no compensation for such efforts. All intervenors were directed to address the issues of underrepresentation, fair determination and duplication in their subsequent requests for compensation.

5. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways.⁵ It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the presiding officer or Commission adopted.⁶ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁷

TURN:

TURN asserts it substantially contributed to D.00-03-021 in three areas. First, TURN cites its contributions to the Commission's analyses of the economic benefits resulting from the merger. We agree with TURN that its recommendations regarding the definition of "long-term" for purposes of calculating the economic benefits resulting from the merger constitute a substantial contribution. TURN's recommendations played a significant role in the Commission's decision to adopt a five-year definition of "long-term", rather than the four-year period proposed by the Applicants. The Commission agreed with TURN that the four-year estimate was unrealistic. (See D.00-03-021,

⁵ Pub. Util. Code § 1802(h).

⁶ Id.

⁷ See for example D.89-03-063.

pp. 44-45.) We note that TURN recommended a definition of “long-term” of 10 years, but in no event less than 5.6 years. While the Commission did not adopt TURN's specific definition, we do not find that this reduces the significance of TURN's contribution. TURN's participation on this issue assisted the Commission in arriving at the five-year definition ultimately adopted. On the issue of economic benefits of the merger, TURN also provided testimony that resulted in Applicants adjusting their benefits forecast to increase the amount of cost savings. (See Exhibit 6, p. 6.) Additionally, TURN provided testimony and argument regarding revenue synergies that contributed to our decision to increase the economic benefits forecast by \$2.375 million over four years. (D.00 03-021, pp. 34-37.)

The second issue on which TURN claims it made a substantial contribution is the inclusion of residential basic exchange service in the merger surcredit billing base. TURN correctly points out that it was the only party to recommend that residential basic exchange service be included. The Commission adopted TURN's recommendation and relied upon its reasoning. As a result of TURN'S advocacy on this issue, additional customers will receive a share of merger benefits. (See D.00-03-021, pp. 74-75.)

Lastly, TURN asserts that its participation on the CCA issue provided a substantial contribution to the decision. We have reviewed the record and agree with TURN's assertion. While the Commission did not require shareholders to fund the CCA as recommended by TURN, we did adopt many of TURN's recommendations to impose conditions on the CCA in order to safeguard ratepayer interests and make the collaborative consistent with Section 854. (See D.00-03-021, pp. 58, 63-65, and 71-72.)

GL/LIF:

The contributions of GL/LIF pertain to the CCA. In their Request, GL/LIF list the activities in which they engaged to demonstrate the contributions made to the decision. They participated in negotiations with Applicants, educated and mobilized local community groups to urge Commission approval of the CCA, and conducted a survey of ratepayer preferences to determine if ratepayers preferred refunds or the establishment of the CCA. During hearings GL/LIF participated on the CCA issue through cross-examination and the presentation of witnesses. During the decision-making phase, they provided comments and reply comments. Lastly, they argue that they met and worked with other signatories to the CCA.

Applicants state in their Response that GL/LIF "unquestionably made substantial contributions to the Commission's decision..." Specifically they cite the efforts of GL/LIF in negotiating the CCA and advocating its adoption. We find that GL/LIF made substantial contributions to D.00-03-021. Their participation played an important role in our decision to adopt the CCA, which will result in millions of dollars being invested to promote telecommunications access to underserved communities. The CCA includes a 98% penetration goal for Universal Lifeline Telephone Service, enhanced charitable contributions from Applicants, and renewed commitments on the part of Applicants to diversity in hiring, promotion, and contracting.

PA:

The participation of PA, like GL/LIF, was limited to the issue of the CCA. PA points out that D.00-03-021 adopted the CCA, and that PA is one of the parties advocating its adoption. PA participation included negotiations with Applicants, attendance at community meetings, communication with lawmakers, participation at hearings, and filing of comments.

In their Response, Applicants conclude that PA made substantial contributions to the Commission's decision to approve the merger with adoption of the CCA. We find that PA's participation represents a substantial contribution to the outcome of the proceeding.

6. Underrepresentation, Fair Determination, and Duplication of Effort

The Eligibility Ruling directs TURN, GL/LIF and PA to address the issues of underrepresentation, fair determination, and duplication of effort in subsequent requests for compensation.

Underrepresentation:

The Commission has previously stated that an NOI must contain information that enables the presiding officer to make a preliminary assessment of whether an intervenor will represent customer interests that would otherwise be underrepresented. Additional assessment of this issue is to occur in response to any request for compensation. If the intervenor is a “customer” who represents interests that would otherwise be underrepresented, and who meets the significant financial hardship criteria, the intervenor may be eligible for an award of compensation. (D.98-04-059, p. 27-28, Finding of Fact 13.) Section 1801.3(f) allows intervenor compensation only for those customer interests which would otherwise be underrepresented. (Id., p. 25.)

TURN submits that it represented the interests of residential and small commercial customers. TURN's focus was the maximization of benefits subject to sharing under Section 854, and insuring that the sharing mechanism delivered a fair portion of those benefits to residential and small commercial customers. We agree with TURN that these interests were distinct from the broader interests represented by the Office of Ratepayer Advocates (ORA), and from the differently focused interests represented by GL/LIF and PA. On the issue of the

CCA there may have been some overlap of representation of interests between these parties. Nonetheless, because the bulk of TURN's participation, as regards with the CCA and other issues, raised customer concern not addressed by these other parties, we conclude that the interests represented by TURN would have been "underrepresented" if TURN had not participated. For example, TURN had unique positions on certain issues related to the CCA, and provided distinct contributions resulting in conditions which significantly improved the CCA. Similarly, on the issue of whether residential basic exchange service should be included in the merger surcredit, TURN represented interests of customers who make few or no toll calls and who have few competitive options, which is an interest that would otherwise have been underrepresented.

The issue of underrepresentation is more complex with regard to the participation of GL/LIF and PA. GL/LIF state that they represented nearly 40 groups, and that their representation was entirely on behalf of low-income, language minority, inner-city, immigrant and other communities who are disproportionately without basic telephone service or access to advanced technologies. PA states that it represents nine organizations (who in turn represent Latino, Filipino, Korean, Indian, and Asian-Pacific community interests), as well as those with limited-English speaking ability, immigrants and low-income persons. We find the customer interests represented by GL/LIF and PA would have been underrepresented if they had not participated. While some of the customers represented by GL/LIF and PA may fall into the categories of customer represented by both ORA and TURN (residential and small business customers), it is clear that the interests of those customers would not have been fully represented by ORA and TURN. Specifically, the interests of low-income, language minority, immigrant and other communities that were advanced by

GL/LIF and PA on the CCA issue would have been underrepresented if ORA and TURN had been the only participants on behalf of residential and small business customers. The participation of ORA and TURN did not focus on the same CCA related issues (or did not focus with the same level of detail) that these two intervenors addressed.

What is not clear is whether there would have been underrepresentation of interests if *only* GL/LIF, or *only* PA, had participated. GL/LIF indirectly address this issue in their Request, which states “only one other intervenor, Public Advocates, appeared on behalf of this large group of underserved, who collectively constitute California’s new majority. Intervenors [GL/LIF] and Public Advocates alone advocated for allocation of Section 854(b)(2) ratepayer benefits to fund the Community Collaborative...Jointly, Public Advocates and Intervenors represented a broad spectrum of underserved California consumers...” (GL/LIF Request, p. 23.)

It is not our intent to discourage a broad range of participation in our proceedings. We defer to the judgment of participants as to whether parties with different constituencies are best served by jointly representing a set of shared interests. The issue that we must consider remains, under Section 1801.3(f), whether duplication in the representation of interests resulted. The issue of duplication of representation of interests goes to whether ratepayers should be required to fund the full participation of both intervenors. Where multiple parties choose to jointly represent overlapping interests, they do so at risk of receiving reduced compensation if they do not coordinate their participation so as to prevent duplication of effort in representing the same interests on the same issues. While we do not reduce the award to either GL/LIF or PA because of the duplication of representation of customer interests, GL/LIF and PA both chose to

represent substantially the same customer interests. Although these particular customer interests would have been underrepresented if neither GL/LIF nor PA had participated, we find that this overlap is a factor that substantiates our conclusion, discussed below, that there was duplication in the efforts of these two parties that warrants a reduction in the award to each.

Fair Determination:

The Commission has previously stated that only participation that is necessary for a fair determination of the proceeding is compensable. Where a customer argues issues that are irrelevant or outside the scope of the proceeding, or beyond the Commission's jurisdiction, compensation may be denied.

(D.98-04-059, p. 31.) We conclude that the participation of TURN, GL/LIF, and PA was limited to issues that were central to the proceeding, and as such that the participation of each meets the "fair determination" standard.

Duplication of Effort:

The intervenor compensation statute expresses an intent that the program be administered in a manner that avoids "unnecessary participation that duplicates the participation of similar interests." (Section 1801.3(f).) The governing statute envisions some participation that is duplicative may still make a substantial contribution and therefore be compensable; however, participation which is duplicative may be unnecessary and therefore an award may be subject to a discount for duplication, or may not be compensable at all. (See D.98-04-049, pp. 49-50.) Intervenors were put on notice by the Eligibility Ruling that to the extent their efforts merely duplicated those of other parties, they were at risk of receiving reduced or no compensation for such efforts.

We agree with TURN that no discount to the award we grant TURN should be made for duplication. TURN made a number of contributions that were clearly distinct from the efforts of other parties. These contributions include analyses of the economic benefits resulting from the merger, inclusion of residential basic exchange service in the merger surcredit billing base, and conditions applied to the CCA. To the extent that there may have been overlap between some of TURN's positions and those of ORA and other intervenors, we

find that the duplication materially supplemented the presentations of other parties. Thus no reduction in award is appropriate.

Both GL/LIF and PA argue that no duplication of effort occurred between them, and that no reduction in the fee award is appropriate. We find the arguments unpersuasive. These parties participated on identical issues and took virtually the same positions on those issues. As discussed above, these intervenors represented essentially identical consumer interests. While the organizations they represent have different names and presumably different memberships, their concerns in this proceeding appear identical. Neither GL/LIF nor PA has identified any position asserted by one intervenor that was not advocated by the other. Both parties participated in the negotiation efforts with Applicants that resulted in the CCA. Much of their time appears to have been spent in similar activities seeking similar or identical results. The substantial overlap of effort between GL/LIF and PA is illustrated by PA's Response to the GL/LIF Request, and the GL/LIF Reply. In these pleadings the parties dispute which of them took the lead in initiating and negotiating the CCA. We need not conclude which party took the lead. It is clear that both parties engaged in similar efforts and there was duplication of effort.

PA does not identify any issues on which the positions of PA and GL/LIF were distinguishable from each other, nor does it identify any activity in which it alone engaged. GL/LIF argues that it did engage in two activities distinct from PA. First, it asserts that it was the only party to conduct a customer survey related to the CCA. Second, GL/LIF argues that it presented two witnesses to testify on behalf of the CCA. With regard to the customer survey, GL/LIF is correct that this activity did not duplicate the efforts of any other party. However, the Commission stated that the survey results were not relied upon in

the decision (D.00-03-021, p. 59). Therefore, while there was no duplication, this effort did not make a substantial contribution to the decision. With respect to the presentation of two witnesses at hearing, we agree with GL/LIF that no duplication of effort occurred. For this reason, while we conclude that a discount in the awards of GL/LIF and PA is appropriate for duplication of effort, it is not appropriate to apply the discount to that portion of GL/LIF's request that pertains solely to presentation of the two witnesses.

We find that the duplication warrants a 40% reduction in the award for both GL/LIF and PA. This reduction is reasonable in light of the substantial duplication of effort. We have in the past applied discounts from 26% (in D.88-12-085) to 10% (see, for example, D.93-06-022), depending upon the extent of duplication. It could be argued in this case that a 50% discount would be appropriate since the full effort of either GL/LIF or PA may have been sufficient to adequately represent the interests that their overlapping efforts championed. A 50% discount to each would result in ratepayers paying once for the representation of this set of interests, instead of paying twice (if both were given an award without duplication discount.) We do not adopt a 50% discount for two reasons. First, because some of the duplication occurred during settlement negotiations, we cannot rule out the possibility that positions of GL/LIF and PA were not concurrent at all times, and that on at least some issues consumers were better served by the efforts of one intervenor over the other, or by the participation of two intervenors. Second, in D.00-03-021 we cite to some arguments made individually by GL/LIF and PA that we relied upon (see, for example, pp. 65-66).

The 40% discount that we adopt means that a full 60% of the participation of both GL/LIF and PA is compensated despite the evidence of substantial

duplication.⁸ One could argue that it also means that ratepayers pay 120% for a 100% job. In other litigation contests, clients expect to pay only once (i.e., 100%) for representation. We will, as discussed above, require ratepayers to pay what amounts to 120% because of the possibility that the participation of these two intervenors representing the same interests on the same issues and in support of the same positions may have provided some extra benefit to ratepayers. To require ratepayers to pay even more is not consistent with the intent of the intervenor compensation statutes.

We have reviewed the documentation provided by GL/LIF in support of its Request in order to identify the number of hours that are not subject to the 40% discount for duplication of effort. We have identified a total of 102.45 hours that relate to presentation of the two witnesses.⁹

7. Reasonableness of Requested Compensation

Request of TURN:

TURN requests \$146,113.66 as follows:

Advocates' Fees

Paul Stein, Attorney

188.25 hours @ \$190/hr. (1999)	=	\$ 35,767.50
34.75 hours @ \$200/hr. (2000)	=	\$ 6,950.00
16 hours @ \$100/hr. (2000)	=	\$ 1,600.00

⁸ The duplication discount will be applied to both fees and costs, consistent with D.97-05-032. In the case of GL/LIF, more than 60% of its participation is compensated, because we compensate in full its efforts related to presentation of the two witnesses.

⁹ The 102.45 hours, all in 1999, were calculated as follows: Brown, 39.2 hours, 5/25-8/4; Gnaizda, 15.1 hours, 6/6-7/26; Gonzales, 24.6 hours, 5/4-7/27; Gamboa, 23.55 hours, 6/3-7/27.

Robert Finkelstein, Attorney		
147.50 hours @ \$265/hr. (1999)	=	\$ 39,087.50
8.25 hours @ \$265/hr. (2000)	=	\$ 2,186.25
Subtotal	=	\$ 85,591.25
<u>Consultant's Fees</u>		
Terry Murray		
77.25 hours @ \$300/hr. (1999)	=	\$ 23,175.00
.75 hours @ \$300/hour (2000)	=	\$ 225.00
Scott Cratty		
194.83 hours @ \$175/hr. (1999)	=	\$ 34,095.25
Subtotal	=	\$ 57,495.25
<u>Other Costs</u>		
Photocopying	=	\$ 2,140.60
Postage	=	\$ 280.06
Fax	=	\$ 21.70
Phone	=	\$ 15.88
Fed Ex/Other	=	\$ 154.50
On-Line Legal Research	=	\$ 414.42
Subtotal	=	\$ 3,027.16
Total	=	\$146,113.66

Request of GL/LIF:

GL/LIF requests \$323,919.22 as follows:¹⁰

Advocates' Fees

Robert Gnaizda		
188.75 hours @ \$375/hr.	=	\$ 70,781.25
Susan E. Brown		
458.15 hours @ \$275/hr.	=	\$125,991.25

¹⁰ This number is the combination of \$323,276.50 in the Request and an additional \$642.72 in the Errata.

Chris Witteman		
327.3 hours @ \$250/hr.	=	\$ 81,825.00
Subtotal	=	\$278,597.50
<u>Consultant/ Expert Fees</u>		
John Gamboa		
64.85 hours @ \$250/hr.	=	\$ 16,212.50
Viola Gonzalez		
34.7 hours @ \$250/hr.	=	\$ 8,675.00
Subtotal	=	\$ 24,887.50
<u>Paralegal Fees</u>		
Jose Hernandez		
132.15 hours @ \$105/hr.	=	\$ 13,875.75
Subtotal	=	\$ 13,875.75
<u>Other Costs</u>		
Postage, photocopies, deliveries, supplies	=	\$ 3,075.30
Postage and copying (see Errata)	=	\$ 642.72
Transportation, phone, parking, mileage, airfare, etc.	=	\$ 2,840.40
Subtotal	=	\$ 6,558.42
Total	=	\$323,919.17

Request of PA:

PA requests \$325,649.24 as follows:

Advocates' Fees

Mark Savage		
770.69 hours @ \$300/hr.	=	\$231,207.00
Maria Andrade		
239.30 hours @ \$225/hr.	=	\$ 53,842.50
John Affeldt		
9.20 hours @ \$285/hr.	=	\$ 2,622.00
Subtotal	=	\$287,671.50

Consultant's Fees

Thomas Hargadon

40 hours @ \$250/hr. = \$ 10,000.00

Subtotal = \$ 10,000.00

Paralegal Fees

Jennifer Cynn

81 hours @ \$110/hr. = \$ 8,910.00

Rebecca Yee

66 hours @ \$110/hr. = \$ 7,260.00

Subtotal = \$ 16,170.00

Other CostsAirfare, copying, messenger service,
phone, etc.

= \$ 11,807.74

Subtotal = \$ 11,807.74

Total = \$325,649.24**7.1 Overall Benefits of Participation**

In D.98-04-059, Finding of Fact 42, we indicated that compensation for a customer's participation should be in proportion to the benefit ratepayers receive as a result of that participation. We recognize that putting a dollar value on the benefits accruing to ratepayers as the result of a customer's substantial contribution may be difficult. However, an assessment of whether the requested compensation is in proportion to the benefits achieved helps ensure that ratepayers receive value from compensated intervention, and that only reasonable costs are compensated. (Id., page 73.)

It is not possible to quantify precisely the benefits to ratepayers of TURN's participation in this proceeding, but it is possible to conclude that they substantially exceed the requested award. TURN's participation on the issue of benefits forecast contributed to our decision to adopt a forecast that is \$56.4

million (net present value) higher than Applicants' initial estimate. As a result, ratepayers will receive on the order of \$28 million more in benefits than they would have received had we adopted Applicants' estimate. TURN's participation also resulted in elements of our decision which provide 1) all GTE ratepayers will see merger related reductions on their bills, and 2) the approximately \$19 million allocated to the CCA will be spent, to the extent possible, in GTE's service territories. These are important benefits to GTE ratepayers. We conclude that the benefits to ratepayers of TURN's participation exceed the costs claimed in this Request. An award of \$146,113.66 to compensate TURN for its efforts on behalf of ratepayers is reasonable.

We similarly conclude that the awards of compensation to GL/LIF and PA are reasonable, after application of the 40% reduction for duplication of effort, and with adjustments to hourly rates and costs as noted below. The participation of both parties played a role in our decision to adopt the CCA with a statewide goal of achieving 98 percent subscribership in underserved communities, and bringing the "information superhighway" to these communities. The CCA creates a \$24 million community technology trust fund to pursue these goals. The benefits to ratepayers of the CCA cannot be precisely quantified, but because so many ratepayers may benefit over the long-term we conclude that the benefit to ratepayers is in proportion to the amount of the awards to GL/LIF and PA.

7.2 Hours Claimed

TURN has segregated its hours by activity in accordance with Commission guidelines. We appreciate the effort that TURN has made to clearly allocate hours to specific issues whenever possible. TURN's efforts to make its request as clear as possible helped to facilitate our review, and we appreciate

TURN's effort to assist us in determining how many hours would be subject to reduction if we had found that TURN had failed to make a contribution on any given issue. Upon review we find that the hours claimed for specific activities performed by attorneys and consultants appear reasonable, and no reduction in the hours claimed is warranted. We note that the time spent by TURN Staff Attorney Paul Stein devoted to preparation of the intervenor compensation request is charged at one-half of his hourly rate. This is consistent with our direction in D.98-04-059. We conclude the hours billed by TURN are generally reasonable and are fully compensable.

The request of GL/LIF is not presented in a manner that facilitated our review. Problems with the format and information in the request required many hours to be spent sorting through GL/LIF records to confirm numbers and determine the correct rates and amounts to be compensated. GL/LIF are directed to make an effort to present future requests in a form that facilitates our review consistent with our direction in D.98-04-059.¹¹ By not doing so, GL/LIF risks having otherwise allowable expenses disallowed because we simply cannot determine the reasonableness of amounts requested.

While GL/LIF has presented many tables categorizing hours in various ways, the result is an abundance of information that does not readily support the requested award. For example, in the Request, Exhibit D, a breakdown of "professional hours" for each attorney and consultant is provided, but the hourly totals do not match the totals that are utilized in the summary of

¹¹ We note D.98-04-059 was the culmination of a rulemaking in which we addressed many policy and practical issues in our intervenor compensation program. Both TURN and GL/LIF participated in that rulemaking.

hours in the Request at page 27. Exhibit D indicates a total of 184.35 hours for Robert Gnaizda, but the summary at page 27 seeks compensation for 188.75 hours. The reason for this discrepancy is not apparent to us. We assume there is some explanation because this type of discrepancy exists in the record of hours for other GL/LIF attorneys and consultants, but we cannot presume that the higher number of hours claimed is reasonable. In the case of Gnaizda, for example, if we assume that he expended the higher number of hours, without knowing what he was doing during those additional 4.4 hours (that evidently were not "professional hours") we do not know at what rate to compensate him. If this time was spent, for example, travelling or in preparation of the fee request, compensation would be at only 1/2 of his allowable hourly rate.

The information that we need may well be somewhere in the documents supporting the request, but after attempting to make these types of determinations, we remain unable to reconcile discrepancies in hours reported. Accordingly, we will only compensate the number of hours for each attorney and consultant that is listed on Exhibit D under "professional hours." We engaged in a similar effort in D.00-04-003, an earlier compensation decision in which we put GL/LIF on notice that more clear breakdowns are needed. If GL/LIF seeks compensation for time spent on travel or fee request preparation in the future, it should identify these hours separately in the request, and clearly indicate that it is seeking the allowable 50% hourly rate. This specification should appear in the summary of hours in the body of the request. Failing to do so may result in disallowance of the hours in question.

We note that on the timesheet of Witteman, which is in a different format from that of the other attorneys, the full hourly rate is charged for travel to Los Angeles on 4/9/99 and for fee petition preparation on 5/2 and 5/3/00.

We will compensate a total of 9.9 hours at one half of Witteman's hourly rate because this error was readily ascertained.

Furthermore, GL/LIF does itself and us a disservice by not providing calculations using the hourly rates that we have previously adopted for its attorneys and consultants. We do not have any objection to GL/LIF continuing to assert that they should be paid at a higher hourly rate than we have allowed, and we are happy to receive those calculations as well. However, having made it clear in D.00-04-003 and other decisions that we intend to use the previously adopted rates, unless and until we modify them, GL/LIF's failure to provide calculations using those rates simply delayed the preparation of this compensation decision. Because GL/LIF does not provide calculations using previously adopted rates we had to review records to make a determination of the years during which the work of all attorneys and consultants was performed, the previously adopted rate for those years, and the resultant fees in this proceeding.

Upon review of the materials submitted by GL/LIF, we conclude that the hours claimed for specific activities appear generally reasonable. With the exception of the reduction of the fee for 9.9 of Witteman's hours, and for hours in excess of those in Request, Exh. D, we will compensate GL/LIF for all hours claimed, subject to the 40% duplication discount discussed above.

The PA request presented us with problems similar to those we have outlined regarding the GL/LIF request. It should not be necessary for us to spend hours sorting through a request trying to find information and verify numbers. This effort delayed the preparation of this compensation decision. By not providing us with calculations for attorney fees using previously adopted rates, we expended unnecessary time digging through exhibits and declarations

to determine past rates, the years in which work was performed, etc. The request also appears to incorrectly seek payment for travel time and fee petition preparation at full hourly rates. It appears that these hours are mingled with other hours in the hourly logs. To the extent that we identify these hours we compensate them at 1/2 the hourly rate, and put PA on notice that in the future such hours will simply be disallowed if PA does not break these hours out separately in its fee request. We find a total of 20.8 hours of travel time identified in Savage's declaration that are incorrectly billed at Savage's full hourly rate. We will compensate for this time at one half his hourly rate.

With the exception of the hours that are compensated at 1/2 the hourly rate, we find that the hours claimed for specific activities appear generally reasonable. We will compensate PA for these hours, subject to the 40% duplication discount discussed above.

7.3 Hourly Rates

TURN seeks compensation for hours worked by attorney Stein in 1999 at \$190 per hour, and at \$200 per hour for work performed in 2000. The most recent Commission approved rate for Stein is \$170.00 per hour for work performed in 1997. (See D.98-08-016.) This is the first case in which TURN has sought an increase in Stein's rate from the 1997 level. Since 1997, Stein has represented TURN in a number of energy and telecommunications proceedings before the Commission. Through this participation Stein has developed an increased level of expertise in the subject matters before us. TURN provides information regarding prevailing market rates for attorneys as identified in the Of Counsel survey for 1999 through 2000. This survey contains information from selected law firms in San Francisco and other major cities. The survey reports a range of associate attorney rates of \$110 to \$350 per hour. Based upon the

information contained in this survey, as well as Stein's level of expertise developed through participation in our proceedings, it is reasonable to increase Stein's rates to the levels requested by TURN. Pub. Util. Code § 1806 provides in part that intervenor compensation awards shall "take into consideration the market rates paid to persons of comparable training and experience who offer similar services." We conclude that henceforth the approved hourly rate for work performed by Stein in 1999 is \$190 per hour, and the approved rate for work performed by Stein in 2000 is \$200 per hour.

TURN requests compensation for the hours worked by attorney Finkelstein in 1999 and 2000 at \$265 per hour. The Commission previously approved this rate for Finkelstein and applied it in D.00-02-008, and D.00-02-038. Accordingly, we apply this rate in this proceeding.

TURN seeks compensation for consultant Scott Cratty at an hourly rate of \$175 for work performed in 1999. Cratty is Vice President of Murray & Cratty, LLC. He provided support for TURN's lead witness, consultant Terry Murray. The most recent Commission approved rate for Cratty is \$125 per hour for work performed in 1996. (See D.98-04-025.) The requested rate of \$175 per hour for 1999 is \$50 per hour higher than the 1996 approved rate. TURN argues that this increase is reasonable considering the impact of inflation and the enormous increase in demand in the past few years for telecommunications experts of Cratty's caliber. TURN states that the rate charged by Cratty to TURN is the same rate that he charges all of his business clients. We agree with TURN that the requested rate is reasonable.

The hourly rate claimed by TURN for consultant Murray is \$300 for work performed in 1999 and 2000. The last Commission approved rate for Murray is \$250 for work performed in 1996. (See D.98-04-025, p. 8.) At that time,

\$250 was the highest hourly rate approved by the Commission for an expert witness, and the Commission noted Murray's extensive qualifications. As in the case of Cratty, TURN states that Murray charged TURN the same consulting rate she charges all of her business clients, including corporations such as AT&T and MCI. We find that the increase in rates sought for Murray is justified by her experience, inflation, and the overall increase in demand for telecommunications experts. We adopt a rate of \$300 per hour for work performed by Murray in 1999 and 2000.

GL/LIF seeks compensation for attorney Gnaizda in 1999 and 2000 at an hourly rate of \$375. The most recent adopted rate for Gnaizda is \$270 per hour for work performed in 1998. (See D.00-04-003.)¹² We will use this rate for work performed in 1999 in this proceeding. We adjust Gnaizda's rate upwards to \$280 per hour for work performed in 2000 in recognition that attorney rates tend to increase over time.

A rate of \$275 per hour is claimed for attorney Brown for work in 1999 and 2000. We will utilize the previously adopted rate of \$250 per hour for work in 1999. (See D.00-04-003.) We increase Brown's hourly rate to \$260 per hour for work performed in 2000.

GL/LIF does not direct us to a previously adopted rate for attorney Witteman. An hourly rate of \$250 per hour is requested. Based upon a review of his experience and qualifications, we conclude that a rate of \$200 per hour is appropriate for work performed in 1999 and 2000. We base this rate upon

¹² GL/LIF filed an application for rehearing of and petition for modification of D.00-04-003. Setting hourly rates in this decision is not intended to prejudice our review of the application for rehearing and petition for modification.

consideration of his relative lack of experience before the Commission, and the fact that he was working with two other attorneys who are compensated at senior attorney rates. The \$200 per hour rate is consistent with the rate paid to Stein of TURN. While Stein has less of years practice than Witteman, he has more experience before the Commission. Both attorneys worked under senior attorneys in this proceeding.

An hourly rate of \$250 is claimed for GL staff member Gamboa. We have previously set an hourly rate for Gamboa of \$135. (See D.00-04-003.) We find no convincing reason to increase his rate at this time. We will utilize the \$135 per hour rate for all work performed in this proceeding. GL/LIF also seeks a \$250 per hour rate for staff member Gonzales, Executive Director of LIF. We have not previously adopted an hourly rate for Gonzales. We find it appropriate to utilize the same rate (\$135 per hour) applied to Gamboa for work on this proceeding.

An hourly rate of \$105 is sought for paralegal Hernandez. GL/LIF does not direct us to previous hourly rates for Hernandez. We will utilize \$75 per hour, the paralegal rate we adopted in D.00-04-011. We note that Witteman prepared separate bills for work performed under his supervision, and that \$75 is the hourly rate he seeks for paralegal work for GL/LIF.

PA proposed an hourly rate of \$300 for attorney Savage. We previously set an hourly rate of \$250 for work in 1998 (D.00-02-044) and \$275 for work in 1999 and 2000 (D.00-05-033) for Savage. We will use those rates here.

We have not previously set an hourly rate for attorney Andrade, who has been an attorney since 1995, and joined PA in 1998. Based upon her experience and qualifications, we set an hourly rate of \$150 for 1998, \$160 for 1999, and \$170 for 2000.

The requested hourly rate for attorney Affeldt is \$285. The previously adopted hourly rate for attorney Affeldt is \$175 for work performed in 1997. (See D.00-02-044). We are disturbed that we find no reference to the previously adopted rate in Affeldt's declaration, but only find citations to higher rates adopted in other venues. We find this omission misleading. It also caused us to engage in unnecessary research to determine our previously adopted 1997 rate. We will adopt a rate of \$185 for work performed in this proceeding in 1999 and 2000.

The hourly rate sought for law clerks Cynn and Yee is \$110 per hour. We will use a \$75 per hour rate, which is the same rate awarded to GL/LIF for its paralegal. We find no justification for granting PA's clerks a higher hourly rate.

We have reviewed the request for an hourly rate of \$250 for expert Hargadon. The Commission has previously utilized this rate for work performed by Hargadon. (See D.96-06-029 and D.96-12-029.) We adopt the requested rate for this proceeding.

7.4 Other Costs

TURN requests \$3,027.16 for miscellaneous expenses. The majority of these expenses are for photocopying, mailing of pleadings, and on-line legal research. The expenses are fully itemized in the Request. The expenses appear reasonable and are fully compensable.

GL/LIF request \$6,558.42 for miscellaneous expenses. The request is problematic in several ways. In the Errata we note the amount claimed is \$642.72, but supporting documentation indicates \$572.59. We cannot determine the cause of the discrepancy and will pay the lower amount. While the dollar difference is small, discrepancies of this kind compel us to question the accuracy of all numbers, which results in wasted time spent verifying all numbers.

More troubling is the inclusion of expenses for which there is no explanation. We cannot compensate for expenses where there is no explanation provided. We deduct the following costs from the award:

- Page 14 of Witteman expense sheet - 10/21/99 airfare for Stewart Kwoh and Giao Bui to attend meeting - \$641.50. No explanation is provided regarding this expense;
- travel expenses for Brown, Gonzales and Hernandez on 4/28, 5/3, 5/10, and 8/16/99 totaling \$117.11. We have compared the dates on which these expenses are billed and find no corresponding work activities to indicate a nexus to this case. We disallowed travel expenses to GL/LIF on this same basis in D.00-04-003;
- \$452.00 for airfare for Barbara Perkins and Ronaldo Babiera for meeting 10/22/99, and \$339.50 for airfare and taxi for meeting 10/22/99. We can locate no explanation in the request regarding the identity of these individuals, a breakdown of what these expenses cover, and why these expenses should be paid by ratepayers in this proceeding.

The disallowed expenses total \$1,550.11.

With the exception of the expenses itemized above, the costs claimed appear reasonable and will be compensated in full, subject to the 40% duplication discount discussed above.

PA requests a total of \$11,807.74 for miscellaneous expenses. Again, the request is cryptic. We cannot compensate for expenses for which no explanation is provided. In Exhibit 1 travel expenses are claimed for individuals and no explanation is provided regarding the identity of these individuals, what the expense amounts cover, and why ratepayers should pay these expenses in this proceeding. We disallow the following unjustified travel expenses:

- Barbara O'Connor (\$242.31);
- Lisa Navarrete (\$884.41);

- Robert Arroyo (\$326.50);
- Jacquelyn Brand (\$218.50);
- Jim Crouch (\$210.19).

We are very concerned about the inclusion of travel expenses for Barbara O'Connor and Jacquelyn Brand. We have reviewed the signature pages to the CCA (which is Attachment C to D.00-03-021). We find that O'Connor signed the CCA as the founder of Alliance for Public Technology, which represented 16 organizations. We find that Brand signed the CCA as Coordinator of Universal Services Alliance, representing 18 organizations. Neither Alliance for Public Technology nor Universal Service Alliance have qualified for or filed for intervenor compensation in this proceeding. It appears that PA inappropriately seeks to reimburse these groups for expenses of participation by means of the intervenor compensation program. This possibility is very disturbing, as it would be an abuse of the intervenor compensation program. We put PA on notice that if we verify inappropriate billing of costs in the future, we will consider imposing sanctions under Rule 1 of the Rules of Practice and Procedure.

The remainder of PA's claimed expenses appear generally reasonable and will be compensated in full, subject to the 40% duplication discount discussed above.

7.5 Award

Award to TURN:

We award \$146,113.66 to TURN for contributions to D.00-03-021. The award is calculated as follows:

Advocate Fees	=	\$ 85,591.25
Consultant Fees	=	\$ 57,495.25
Other Costs	=	<u>\$ 3,027.16</u>

Total Compensation Award = \$146,113.66

The breakdown of TURN's advocate and consultant fees and other costs is shown in Section 7 of today's decision.

Award to GL/LIF:

We award \$159,414.76 to GL/LIF for contributions to D.00-03-021.

The award is calculated as follows:

Advocates' Fees:

Robert Gnaizda, Attorney

159 hours @ \$270/hr. ('98-'99) = \$ 42,930.00

25.3 hours @ \$280/hr. (2000) = \$ 7,084.00

Susan E. Brown, Attorney

375.5 hours @ \$250/hr. ('98-'99) = \$ 93,875.00

72.4 hours @ \$260/hr. (2000) = \$ 18,824.00

Chris Witteman, Attorney

317.4 hours @ \$200/hr. ('99-'00) = \$ 63,480.00

9.9 hours @ \$100/hr. (1/2 rate) = \$ 990.00

Subtotal = \$227,183.00

Consultant/Expert Fees

John Gamboa

63.45 hours @ \$135/hr. ('98-'00) = \$ 8,565.75

Viola Gonzalez

33.95 hours @ \$135/hour ('99-'00) = \$ 4,583.25

Subtotal = \$ 13,149.00

Paralegal Fees

Jose Hernandez

91.15 hours @ \$75/hr ('99-'00) = \$ 6,836.25

Subtotal = \$ 6,836.25

Other Costs

Subtotal = \$ 4,938.18

Total fees and costs before discount = \$252,106.43

Amount not subject to duplication discount	=	\$ 20,377.25 ¹³
Amount subject to 40% duplication discount	=	\$231,729.18
Minus 40% duplication discount	=	\$ 92,691.67
Total compensation award (\$20,377.25 plus \$139,37.51)	=	\$159,414.76

Award to PA:

We award \$167,844.20 to PA for its contributions to D.00-03-021. The award is calculated as follows:

Advocates' Fees

Mark Savage, Attorney		
20.5 hours @ \$250/hr. ('98)	=	\$ 5,125.00
730 hours @ \$275/hr. ('99-'00)	=	\$200,750.00
20 hours @ \$137.50 (1/2 hourly rate)	=	\$ 2,750.00
Maria Andrade, Attorney		
221.9 hours @ \$160 ('99)	=	\$ 35,504.00
17.4 hours @ \$170 ('00)	=	\$ 2,958.00
John Affeldt, Attorney		
9.2 hours @ \$185 ('99-'00)	=	\$ 1,702.00
Subtotal	=	\$248,789.00

Consultant's Fees

Thomas Hargadon		
40 hours @ \$250/hr.	=	\$ 10,000.00
Subtotal	=	\$ 10,000.00

Paralegal Fees

147 hours @ \$75/hr	=	\$ 11,025.00
Subtotal	=	\$ 11,025.00

¹³ This amount is calculated as follows: Brown, \$9800; Gnaizda, \$4077; Gonzales, \$3321; Gamboa, \$3179.25.

Other Costs

Subtotal	=	\$ 9,926.33
Total Fees and Costs before discount	=	\$279,740.33
Minus 40% Duplication Discount	=	\$111,896.13
Total Compensation Award	=	\$167,844.20

Consistent with previous Commission decisions, we will order that interest be paid on the award amounts (calculated at the three-month commercial paper rate) to each intervenor, commencing the 75th day after TURN, GL/LIF, and PA filed their compensation requests and continuing until full payment is made.

As in all intervenor compensation decisions, we put the intervenors on notice that the Commission's staff may audit intervenors' records related to this award. Thus, intervenors must make and retain adequate accounting and other documentation to support their claims for intervenor compensation. The records should identify specific issues for which compensation is requested, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation is claimed.

8. Comments On Draft Decision

The ALJ's draft decision on these compensation requests was mailed to the parties in accordance with Pub. Util. Code Section 311(g) (1) and Rule 77.7 of the Rules of Practice and Procedure. TURN, PA, and GL/LIF filed opening comments. Verizon Communications, PA, and TURN filed reply comments. We have reviewed the comments and conclude that no substantive changes to the draft decision are warranted. We make a modification to Finding of Fact 8, as discussed below, to clarify that we apply a discount for duplication of effort because the duplication was unproductive and unnecessary.

In D.98-04-059 we addressed the statutory standards that require us to administer the intervenor compensation program to avoid unnecessary duplication of participation. It was our goal in that decision to bring the issue to the attention of all intervenors in order to minimize duplication and the need for major duplication disallowances. Consistent with this goal intervenors were put on notice by the Eligibility Ruling in this proceeding that to the extent their efforts merely duplicated those of other parties, they were at risk of receiving reduced or no compensation for such efforts.

On various grounds, all the commenters challenge the disallowance for duplication. TURN and PA suggest that the draft misconstrues the statutory provision regarding duplication. GL/LIF and PA also claim that the draft decision ignores the ways in which each of them made unique contributions. Verizon Communications (successor to one of the original applicants in this proceeding) agrees generally with GL/LIF and PA that their respective fee requests should not be reduced based on duplication of effort. We first examine the statutory arguments, then respond to the arguments regarding unique contributions.

The relevant provisions of the Pub. Util. Code are Sections 1801.3(f) and 1802.5. The first provision states the legislative intent that the Commission administer the intervenor compensation program so as to avoid “unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding.” (PA’s emphasis.) The second provision states that customer participation that “materially supplements, complements, or contributes to the presentation of another party...may be fully eligible for

compensation if the participation makes a substantial contribution...consistent with Section 1801.3.”

TURN and PA seem to read Section 1802.5 so liberally as to render Section 1801.3(f) inconsequential, i.e., unless the positions and supporting arguments of two intervenors are identical, there is merely an “overlap” not subject to discount due to duplication of effort. These two sections are easily harmonized, however. The phrase “materially supplements, complements, or contributes” in Section 1802.5 clearly denotes participation that in some significant way enlarges or enhances participation of another party. Our problem with the participation of PA and GL/LIF in this proceeding is that their respective participation did not achieve what Section 1802.5 requires for full compensation. Without materially supplementing, complementing, or contributing to each other’s showings, their participation was merely additive, and so was “unproductive or unnecessary” within the meaning of Section 1801.3(f). We have discounted their awards accordingly.¹⁴

GL/LIF argues that because its total compensation request was less than that of PA, it was more efficient and should not be subject to the duplication discount. GL/LIF also argues that the fact that a settlement was reached is evidence of efficiency, and thus no duplication discount should be applied. We

¹⁴ PA alleges the draft decision fails to make the requisite finding that the duplication was unproductive or unnecessary. The allegation is surprising. Findings 6, 7, and 8, as well as our discussion in the opinion, cite Section 1801.3(f), say that duplication occurred, and find that a discount in light of the duplication should be applied to the awards. Unquestionably, there was unproductive and unnecessary duplication, and we have modified finding 8 to expressly so indicate.

reject these arguments. As discussed above, the Legislature has instructed that we administer the intervenor compensation program to avoid unproductive or unnecessary duplication. The question of whether unproductive or unnecessary duplication occurred is distinct from our review of the reasonableness of hours expended in the proceeding. Based on our review here, we concluded that the hours expended individually by GL/LIF and PA appeared generally reasonable, and we made no reduction for inefficiency; however, we found their efforts substantially duplicated each other. This duplication rendered much of their participation unproductive or unnecessary within the meaning of the statute.

GL/LIF claims that the draft decision errs in applying the duplication discount to two issues where its participation was unique. First, GL/LIF maintains that it supported "conflict-free" CCA fund administration, while PA argued for the administration model that was adopted by the Commission in the SBC/Pacific Telesis merger proceeding. We agree that GL/LIF and PA took different positions on this issue; however, we do not find this circumstance a reason to modify the 40% duplication discount. As we explained in the discussion on duplication of effort, we adopted a 40% discount instead of a 50% discount to address exactly this type of situation. We recognized the possibility that on at least some issues GL/LIF and PA took different positions, and therefore we allowed for compensation of 60% of the participation of each. Second, GL/LIF claims that we err in applying the 40% duplication discount to attorney and witness fees related to presentation of its two witnesses. GL/LIF misreads the draft decision. In fact, because these were the only two witnesses to testify on the CCA, we expressly did not apply the discount to that portion of GL/LIF's request pertaining to this testimony. All 102.45 hours of attorney and

witness time related to the presentation of the two witnesses are compensated at the full hourly rates authorized.¹⁵

On the other hand, we reject PA's request that its expert Hargadon be exempted from the 40% duplication discount. Unlike the GL/LIF witnesses, the testimony of the PA witness was withdrawn, and he did not testify. Under the circumstances, we find that 60% compensation of PA's efforts related to preparation of testimony by Hargadon fairly recognizes such contribution as this withdrawn testimony may have made to the ultimate settlement. PA also argues, on the basis of its cross-examination and argument in its brief regarding (1) service and lack of competition in underserved communities, and (2) the beneficial effects of the CCA, that it took unique positions on these issues, and thus no duplication discount should be applied. We find that GL/LIF was active on these issues and took very similar positions. But even if some of PA's arguments or positions were unique, we took account of that possibility in adopting a 40% discount instead of a 50% discount. Our review of PA's citations to the record does not disclose any evidence of unique participation that goes beyond what we contemplated by the adoption of a 40% discount.

Lastly on the duplication issue, Verizon argues, without citations to the record, that a duplication discount should not be applied because both GL/LIF and PA made contributions and offered varying perspectives. We find that application of the duplication discount is not at odds with Verizon's observations. We recognize that both of these intervenors made substantial

¹⁵ For a complete discussion of the compensation of these two witnesses, see notes 8 and 9 and the accompanying text in section 6 above.

contributions, and that because their positions were not completely identical, 60% of their respective participation should be compensated.

Besides the duplication issue, GL/LIF object to the hourly rate set for determining the fees awarded their expert witnesses, and PA objects to the hourly rate for its law clerks. Turning first to GF/LIF, they suggest that we improperly distinguish in hourly rates between TURN's expert witnesses (from the firm of Murray & Cratty LLC) and GL/LIF's expert witnesses (who are part of GL/LIF's staff). According to GL/LIF, their experts were awarded lower rates because their experts are not "for hire" (GL/LIF Comments, p.10), and because their experts represent minorities. (*Id.*, p. 2.) GL/LIF are mistaken. The respective hourly rates are set with due regard for the standard set in Section 1806¹⁶ and applied by us in setting hourly rates in this and many prior proceedings in which these particular expert witnesses have participated.

As TURN correctly notes in replying to GL/LIF, the Commission can draw reasonable distinctions between expert witnesses who provide different services in a similar market, or who operate in different markets. For reasons explained below, such distinctions are evident here.

Historically, the Murray firm has provided analysis (including computer modeling) of technical issues pertinent to regulatory economics in general (for example, cost of capital) and in particular to the restructuring of traditional utility industries, especially telecommunications (for example, pricing of

¹⁶ Section 1806 reads, in relevant part, "The computation of compensation...shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services."

unbundled network elements).¹⁷ In this proceeding, the Murray firm submitted testimony on the appropriate standard to use in analysis of merger benefits, the calculation and allocation of those benefits, and the merger's effects on local competition. TURN has provided data supporting our finding that the hourly rates set for the Murray firm reflect market rates for persons who perform the analytical work just described.

GL/LIF's experts, as compared to the Murray firm, perform different kinds of analysis. At the Commission, the GL/LIF experts have analyzed the impacts on low-income communities of changes in traditional utility industries. GL/LIF do not assert that the market rate for such analysis is the same as the market rate for the kind of analysis the Murray firm performs. GL/LIF base their argument about market rate on the impressive credentials that their experts have. We do not question those credentials; however, the statute speaks not just to training and experience but also to "similar services." GL/LIF's experts did not perform services similar to those of the Murray firm, and accordingly we cannot use the Murray firm hourly rates unless we can reasonably find that the services actually performed by GL/LIF's experts command those hourly rates in the market. We have no basis on this record to make such a finding.

PA contends that the hourly rate for law clerks should be \$100 per hour, rather than the \$75 per hour that we utilize. PA's citation to D.00-02-044 does not convince us to modify the adopted rate. In that decision we refer to a survey

¹⁷ As principal in her own firm, Terry L. Murray has testified before this Commission and the California Department of Insurance, the Federal Communications Commission, and the utility regulatory bodies of Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Kansas, Maryland, Michigan, Nevada, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Texas, Vermont, Virginia, Washington, and Wisconsin.

showing average billing rates for paralegals between \$41 and \$117 per hour. This is generally consistent with the \$75 per hour rate that we utilize here and that we previously adopted in D.00-04-001.

Lastly, TURN and GL/LIF argue that the Commission unduly scrutinizes the accounts presented by intervenors in support of compensation requests. We disagree. Our decisions (including today's decision) apply the statutory standards that govern compensation requests, as well as our rules and decisions where we have implemented or interpreted those standards. Unfortunately, as our experience in this proceeding illustrates, the accounts of some intervenors are sometimes very deficient. That this has happened in this proceeding and many times before with GL/LIF is regrettable, but the cure lies with GL/LIF.

Findings of Fact

1. TURN, GL/LIF, and PA have previously been found eligible for compensation in this proceeding in an ALJ Ruling dated April 1, 1999.
2. TURN, GL/LIF, and PA have demonstrated significant financial hardship in this proceeding.
3. TURN, GL/LIF, and PA have made timely requests for compensation for contributions to D.00-03-021.
4. TURN, GL/LIF, and PA all made substantial contributions to D.00-03-021.
5. Any duplication of effort between TURN, ORA, and any other intervenor does not warrant a reduction in the amount of TURN's award. TURN represented customer interests that would otherwise have been underrepresented.
6. Pub. Util. Code § 1801.3(f) directs the Commission to administer the intervenor compensation rules in a manner that "avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented..."

7. In this proceeding because GL/LIF and PA represented similar or identical interests, there was duplication of participation. In addition, GL/LIF and PA litigated the same issues, and took the same positions on those issues.

8. It is reasonable to apply a 40% discount to the awards to GL/LIF and PA as a discount for unproductive and unnecessary duplication of effort.

9. The benefits to customers of the participation of TURN, GL/LIF, and PA outweigh the costs of funding their participation, after application of a 40% discount to the award to GL/LIF and PA.

10. The hourly rates requested by TURN for work performed by attorneys and consultants are consistent with the intent of Pub. Util. Code § 1806 that intervenor compensation awards shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services. The hours billed by TURN are generally reasonable and are fully compensable.

11. The format of the information presented in the GL/LIF Request did not facilitate determination of the reasonableness of hours and fees claimed. This caused delay in the issuance of this decision. The hours claimed for work by attorneys and staff in the Request, Exhibit D, appear generally reasonable and we will compensate for those hours subject to the 40% discount for duplication.

12. The hours claimed by GL/LIF for Witteman appear generally reasonable and fully compensable subject to the 40% discount for duplication with the exception of 9.9 hours expended on travel and fee petition preparation. These 9.9 should have been billed at half Witteman's hourly rate, and we will compensate at that rate.

13. The hourly rates proposed by GL/LIF are not consistent with prior Commission decisions. The hourly rates claimed for Gnaizda, Brown and Gamboa are higher than rates previously adopted for the same time periods. We

find the previously adopted rates reasonable and will utilize them here. It is reasonable to make the following upward adjustments for work performed in 2000 as follows: Gnaizda - \$280 per hour; Brown - \$260 per hour. Based upon his experience and qualifications a \$200 per hour rate for Witteman in 1999 and 2000 is reasonable. A rate of \$135 per hour is reasonable for work performed by staff member Gonzales, and is consistent with the rate previously adopted for Gamboa. A paralegal rate of \$75 per hour is reasonable and consistent with D.00-04-011.

14. The format of the information presented by PA in its Request did not facilitate a determination of the reasonableness of hours and fees claimed. This caused delay in the issuance of this decision. Time spent on travel and fee petition preparation is not clearly identified and is incorrectly billed at full hourly rates. We have identified 20.8 hours of Savage's time that should have been billed at one half his hourly rate, and we will compensate it at that rate. The remainder of the hours billed appear generally reasonable and fully compensable, subject to the 40% discount for duplication of participation.

15. With the exception of the hourly rate for expert Hargadon, the hourly rates proposed by PA are not consistent with prior Commission decisions. The hourly rate claimed for Hargadon is reasonable in this proceeding. The hourly rates previously adopted for Savage are reasonable and we will use them here. An hourly rate of \$185 is reasonable for Affeldt in 1999 and 2000, and is consistent with the rate in D.00-02-044. Based upon her experience and qualifications the following hourly rates are reasonable for Andrade: 1998 -\$150; 1999- \$160; 2000 - \$170. A paralegal rate of \$75 per hour is consistent with D.00-04-011.

16. The miscellaneous other costs incurred by TURN in this proceeding are reasonable and fully compensable.

17. The miscellaneous other costs claimed by GL/LIF are reasonable and fully compensable, subject to a 40% discount for duplication, with the following exceptions. The following costs are disallowed because they are not adequately explained and documented, and do not appear reasonably incurred in this proceeding: expenses for airfare and travel totaling \$1,550.11; a discrepancy of \$70.13 in the Errata.

18. The miscellaneous other costs claimed by PA are reasonable and fully compensable subject to a 40% discount for duplication, with the following exceptions. The following costs are disallowed because they are not adequately explained and documented, and do not appear reasonably incurred in this proceeding: expenses for airfare and travel totaling \$1,881.91.

19. O'Connor and Brand, for whom PA seeks reimbursement of travel expenses, signed the CCA on behalf of Alliance for Public Technology and Universal Services Alliance. Neither organization has been found eligible for nor sought intervenor compensation in this proceeding. It appears that PA inappropriately seeks compensation for their expenses through the intervenor compensation program. The travel costs for O'Connor and Brand should be disallowed.

Conclusions of Law

1. The motion of GL/LIF for leave to late-file a Reply to the Response of PA should be granted.

2. TURN, GL/LIF, and PA have fulfilled the requirements of §§ 1801-1812 of the Pub. Util. Code, which govern awards of intervenor compensation.

3. TURN should be awarded \$146,113.66 for its contributions to D.00-03-021.

4. GL/LIF should be awarded \$159,414.76 for its contributions to D.00-03-021.
5. GL/LIF's award should be interim and subject to adjustment given the pendency of GL/LIF's application for rehearing of and petition for modification of D.00-04-003.
6. PA should be awarded \$167,844.20 for its contributions to D.00-03-021.
7. This order should be effective today so that intervenors may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The motion of The Greenlining Institute and Latino Issues Forum (GL/LIF) for leave to late-file a Reply to the Response of Public Advocates (PA) is granted.
2. The Utility Reform Network (TURN) is awarded \$146,113.66 in compensation for substantial contributions to Decision (D.) 00-03-021.
3. GL/LIF is awarded \$159,414.76 in compensation for substantial contributions to D.00-03-021.
4. GL/LIF's award is interim and subject to adjustment given the pendency of GL/LIF's application for rehearing of and petition for modification of D.00-04-003.
5. PA is awarded \$167,844.20 in compensation for substantial contributions to D.00-03-021.
6. GTE Corporation (GTE) and Bell Atlantic Corporation (Bell Atlantic) shall pay TURN \$146,113.66 within 30 days of the effective date of this order. GTE and Bell Atlantic shall pay GL/LIF \$159,414.76 within 30 days of the effective date of this order. GTE and Bell Atlantic shall pay PA \$167,844.20 within 30 days

of the effective date of this order. GTE and Bell Atlantic shall also pay to TURN, GL/LIF, and PA interest on the award of each at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning July 19, 2000, and continuing until full payment is made.

7. This proceeding is closed.

This order is effective today.

Dated _____, 2001, at San Francisco, California.